

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

KEVIN MCCULLERS, :  
Plaintiff, : No. 5:15-cv-3732  
v. :  
: COMMONWEALTH OF PENNSYLVANIA, :  
: LEHIGH COUNTY, :  
: CITY OF ALLENTOWN, :  
: CARLOS ROBERTO BERNARDI, :  
: JOHN DOES, 1 THROUGH 10, :  
: FRED J. CONTINO, :  
: and HOWARD W. ALTEMOS, JR., :  
Defendants. :  
:

## ORDER

**AND NOW**, this 30<sup>th</sup> day of June, 2016, for the reasons set forth in the Memorandum issued this date, **IT IS HEREBY ORDERED THAT**:

1. The Motions to Dismiss filed by the City of Allentown, ECF No. 28, Lehigh County, ECF No. 30, Carlos Roberto Bernardi, ECF No. 41, and the Commonwealth of Pennsylvania and Fred J. Contino, ECF No. 50, are **GRANTED in part and DENIED in part** as follows:

A. Any First Amendment claims are **DISMISSED** with prejudice.

B. Plaintiff's Fourteenth Amendment claims for violation of his due process rights are **DISMISSED with prejudice**.

C. Plaintiff's Fourteenth Amendment claims under the theory of an equal protection violation are **DISMISSED without prejudice**. Plaintiff shall file a second amended complaint within twenty days of the date this action is returned to the Court's active docket.

D. Plaintiff's Fourth Amendment claims may proceed against all moving Defendants under the limited theories discussed in the Memorandum.

E. The Commonwealth of Pennsylvania, and all claims against it, are **DISMISSED with prejudice**. The Clerk of Court shall **TERMINATE** the Commonwealth of Pennsylvania as a party to this action.

F. The claims against Contino are **DISMISSED**. The Clerk of Court shall **TERMINATE** Contino as a party to this action. The official capacity claims are dismissed with prejudice, but the individual capacity claims are dismissed without prejudice. Plaintiff shall file a second amended complaint as to the individual capacity claims within twenty days of the date this action is returned to the Court's active docket.

G. Contino's qualified defense is **DENIED without prejudice** as moot.

H. Bernardi's request to strike is **DENIED without prejudice**.

2. Altemos's Motion to Stay, ECF No. 31, is **GRANTED**.

A. The Clerk of Court shall **TRANSFER** the above-captioned action to the **Civil Suspense Docket**, and **MARK** the case **CLOSED for statistical purposes**.

B. The Court shall **RETAIN** jurisdiction over the case and shall **RETURN** it to the Court's active docket once the case is ready to proceed to final disposition.

C. The parties are directed to notify this Court within twenty days of the conclusion of the state criminal proceedings against Defendant Altemos.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.  
JOSEPH F. LEESON, JR.  
United States District Judge